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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

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OFFICE OF PETITIONS

In re Application of :
Antkowiak, et al. : DECISION ON PETITION
Application No. 09/914,403 :
Filed: August 27, 2001 :
Docket No.: 2345/162 :
:

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 21, 2006, to revive the above-identified application.

The petition is GRANTED TO THE EXTENT INDICATED HEREIN.

This application became abandoned November 10, 2005 for failure to timely reply to the non-final Office action mailed August 9, 2005. The non-final Office action set a three month shortened statutory period of time for reply. No petition for extension of time in accordance with 37 C.F.R. § 1.136 was timely submitted. This decision precedes Notice of Abandonment.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the non-final Office action is accepted as having been unintentionally delayed.

However, as to item (1) set forth above, the request for continued examination (RCE) will not be entered into the record. In accordance with the provisions of 37 CFR 1.114, an RCE is appropriately filed after prosecution in the application is closed. As the instant application is presently subject to non-

final rejection, prosecution on the merits remains open. Accordingly, the RCE submitted herewith is deemed inappropriate. Petitioners may request a refund of the fee submitted in association with the RCE by writing to the Finance Office, Refund Section, enclosing therewith a copy of the instant decision.

Further, pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$1,020.00 extension of time fee submitted herewith was subsequent to the maximum period obtainable for reply, this fee is unnecessary. Petitioner may request a refund of this fee by writing to the Office of Finance, Refund Section, enclosing therewith a copy of the instant decision.

This application will be forwarded to Technology Center 2600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
Petitions Attorney
Office of Petitions